

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WA. No. 322 of 2007()

AGAINST THE JUDGEMENT IN WPC.2455/2007 Dated 30/01/2007
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APPELLANT: WRIT PETITIONER

V.J.SEBASTIAN,
S.S.ALUMINUM FABRICATORS, PALLURUTHY.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.K.P.PRADEEP (PAYYANNUR)

RESPONDENTS: RESPONDENTS

1. THE COMMERCIAL TAX OFFICER (WC & LT),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERY.
2. THE COMMISSIONER, COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SPL. GOVT. PLEADER FOR TAXES SRI MATHEW G. VADAKKEL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C. J. & M.N. KRISHNAN, J.

Writ Appeal No 322 of 2007

Dated: 26th February, 2007.

JUDGMENT

Radhakrishnan, Ag.C.J.

Writ petition was preferred by the appellant seeking a writ of certiorari to quash Exts. P1 and P2 assessment orders and for a direction to the second respondent to issue necessary orders to maintain visitors book in every offices functioning under the Department and also for other consequential reliefs. Assessee's main grievance is that before passing Exts. P1 and P2 assessment orders no effective opportunity was given to him or his representative to place all the records before the assessing authority. Ext. P1 assessment order relates to the year 2003-2004 and Ext. P2 assessment order relates to the year 2004-2005. Assessee received Ext.P3 notice in form No. 50 dated 1.12.2006 by which he was directed to produce the books of accounts for the years 2003-2004 and 2004-2005 on 7.12.2006. On receipt of the same assessee filed Ext. P4 letter requesting the officer to adjourn the matter to a convenient date in the first week of

January 2007. Assessee submits that without granting time the first respondent issued notice under Section 17 (3) of the Kerala General Sales Tax Act, 1963 proposing to complete the assessment on best judgment. Identical notice was issued in respect of the year 2004-2005 wherein assessee sought one week's time. Assessee later received another notice dated 23.12.2006 granting time upto 26.12.2006.

2. Counsel for the assessee submits that on the said date assessee deputed Smt Radhika, Salestax Practitioner to appear before the first respondent on the morning of 26.12.2006, Sales Tax Practitioner appeared before the first respondent on the morning of 26.12.2006 with the books of accounts for the years 2003-04 and 2004-05. An affidavit was filed before this court by the Sales Tax Practitioner stating that she had appeared before the officer at 11 A.M on 26.12.2006 with all books of accounts pertaining to the above mentioned assessment years. She was however informed that the books of accounts would be verified later since the officer was busy with various other work and was directed to produce the books of accounts on another day which would be intimated within three or four days.

3. When the matter came up for hearing we directed learned Government Pleader to get instructions in the matter. On instructions it was submitted by the learned Government Pleader that the Sales Tax

Practitioner did appear on behalf of the assessee on 26.12.2006. Further it was stated that the assessee was not co-operating for the finalisation of the assessment years in question.

4. The question that has come up for consideration in this case is whether the Sales Tax Practitioner had appeared before the first respondent with the relevant books of accounts on 26.12.2006. Affidavit filed by the Sales Tax Practitioner would indicate that she appeared before the first respondent at 11 A.M on 26.12.2006, but the stand of the first respondent is otherwise. We are not in a position to find out whether in fact the Sales Tax Practitioner had appeared on 26.12.2006 before the first respondent. No records are kept in the office of the first respondent recording each day's proceedings. If the first respondent had maintained a visitors' book or other register in the office it would have been possible to ascertain whether in fact the Sales Tax Practitioner had appeared before the first respondent on 26.12.2006.

5. We are of the view, since the assessee or their representatives are required to be present before the assessing authority while finalising the assessment it is highly necessary that all the Sales Tax Offices should keep Register recording the proceedings including a visitors' book. When the assessee or his representative appears on the date notified the

proceedings could be recorded and the signature could be obtained. If there is no appearance for the assessee the assessing authority can also note it in the register of non appearance. In the absence of any register, we are inclined to accept the affidavit of the Sales Tax Practitioner that she was present on 26.12.2006.

6. We are therefore inclined to allow this appeal and set aside the assessment orders giving an opportunity to the assessee to produce the records before the first respondent on a date notified. We are also inclined to give a direction to the second respondent to give a general direction to all the Sales Tax Offices in the State to maintain a Register so that the proceedings could be minuted including the appearance or non appearance of parties. The writ appeal is allowed and Exts. P1 and P2 are set aside directing the first respondent to pass fresh orders after notice to the assessee.

Sd/-

K.S. RADHAKRISHNAN
Ag. Chief Justice

Sd/-

M.N. KRISHNAN
Judge

26/02/2007

en/

[true copy]

